

◆ **Law Office of Nora J. Chorover** ◆

nchorover@choroverlaw.com

September 4, 2015

BY CERTIFIED MAIL

Curt Spalding, Regional Administrator
EPA New England, Region 1,
5 Post Office Square - Suite 100
Boston, MA 02109-3912
Certified # 7014 3490 0000 7429 8343

Gina McCarthy, Administrator
US EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Certified # 7014 3490 0000 7429 8374

Citizen Suit Coordinator
Environment and Natural Resources
Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
Certified # 7014 3490 0000 7429 8350

RECEIVED
SEP - 8 2015
OFFICE OF THE REGIONAL ADMINISTRATOR

Re: **Notice of Filing of Complaint and Execution of Consent Decree in
Clean Water Action Complaint v. Bond Construction Co., Case No. 1:15-cv-13283**

Dear Sirs/Madams:

In accordance with Section 505(c)(3) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365 (c)(3), and 40 CFR 135.4, we are enclosing a conformed copy of a complaint filed by this office on behalf of Clean Water Action against MATEP LLC on September 3, 2015.

Also enclosed pursuant to 40 CFR 135.4 please find an executed copy of the parties' proposed consent Decree resolving the above captioned action brought under the citizen suit provision of the Clean Water Act. We have informed the Court of the parties' settlement and of the statutory requirement of 45 days' notice to the United States prior to entry of any Consent Decree. Please feel free to call me if you have any questions about the enclosed. Thank you.

EPA Region I, EPA Headquarters, Dept. of Justice

September 4, 2015

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Sincerely,

A handwritten signature in black ink, appearing to read "Nora J. Chorover", with a horizontal line extending to the right.

Nora J. Chorover

Enclosures

cc: Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Boston, MA 02108
Certified # 7014 3490 0000 7429 8367

Sander E. Rikleen, Esq. (by email)

NORA J CHOROVER (Bar No. 547352)
Law Office of Nora J. Chorover
11 Green Street
Boston, MA 02130
617-477-3550

Filed Electronically 9/3/2015

Attorney for Plaintiff
CLEAN WATER ACTION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CLEAN WATER ACTION,

Plaintiff,

v.

MATEP LLC,

Defendant.

Case No. 15-cv-13283

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

(Clean Water Act,
33 U.S.C. §§ 1251 to 1387)

CLEAN WATER ACTION ("CWA") by and through its counsel, hereby alleges:

INTRODUCTION

1. This is a civil suit brought under the citizen suit enforcement provisions of the Clean Water Act, 33 U.S.C. § 1251, et seq. (the "Clean Water Act" or "the Act"). Plaintiff seeks declaratory judgment, injunctive relief, and other relief the Court deems appropriate for defendant's illegal discharges of polluted stormwater into a portion of Boston's municipal storm drain system that drains to the Muddy River. MATEP operates a steam electric generating facility at 474 Brookline Avenue, Boston, Massachusetts. As rain or snow melt comes into contact with the facility, it picks up pollutants, flows to the City of Boston's municipal storm drain system, and is ultimately discharged to the Muddy River.

2. For many years, the company's stormwater discharges have contained excessive levels of Iron. Because the company failed to put into place measures to stop these excessive levels of Iron in its stormwater, it violated and continues to violate the Clean Water Act.

3. Stormwater pollution is a significant source of water quality problems for the nation's waters. The Massachusetts Department of Environmental Protection has determined that stormwater runoff represents the single largest source responsible for water quality impairments in the Commonwealth's rivers, lakes, ponds, and marine waters.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the parties and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the United States).

5. On November 3, 2014, Plaintiff provided notice of Defendant's violations of the Act, and of its intention to file suit against Defendant (the "Notice Letter"), to the Administrator of the United States Environmental Protection Agency ("EPA"); the Administrator of EPA Region 1; the Commissioner of the Massachusetts Department of Environmental Protection ("DEP"); and to Defendant, as required by the Act, 33 U.S.C. § 1365(b)(1)(A).

6. More than sixty days have passed since notice was served on Defendant and the state and Federal agencies. Plaintiff is informed and believes, and thereupon alleges, that neither EPA nor the Commonwealth of Massachusetts has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. This action is not barred by any prior administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

7. Venue is proper in the District Court of Massachusetts pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

PARTIES

8. Plaintiff CLEAN WATER ACTION (“CWA”) is a nationwide non-profit public benefit corporation organized under the laws of the District of Columbia, with offices located in Boston and Northampton, Massachusetts. CWA has approximately 50,000 members who live, recreate, and work in and around waters of the Commonwealth of Massachusetts, including the Muddy River. CWA works to protect the nation’s water resources. To further this goal, CWA actively seeks Federal and state agency implementation of the Act and other laws and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

9. Members of CWA have a recreational, aesthetic and/or Environmental interest in the Muddy River. One or more of such members who reside in Boston metropolitan area use and enjoy the Muddy River for recreation, sightseeing, wildlife observation and/or other activities in the vicinity of and downstream of Defendant’s discharges. These members use and enjoy the waters into which Defendant has caused, is causing, and will continue to cause, pollutants to be discharged. The interests of CWA’s members have been, are being, and will continue to be adversely affected by Defendant’s failure to comply with the Clean Water Act, as alleged herein. The relief sought herein will redress the harms to Plaintiff caused by Defendant’s activities.

10. Continuing commission of the acts and omissions alleged herein will irreparably harm Plaintiff and the citizens of the Commonwealth of Massachusetts, for which harm they have no plain, speedy, or adequate remedy at law.

11. Defendant MATEP LLC is a corporation organized under the laws of the State of Delaware that operates a steam electric generating facility in Boston, Massachusetts.

STATUTORY BACKGROUND

12. Pollutant Discharges without a Permit are Illegal. The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the Federal Environmental Protection Agency (“EPA”) under the National Pollutant

Discharge Elimination System (“NPDES”). Sections 301(a), 402(a) and 402(p) of the Act. 33 U.S.C. §§ 1311(a), 1342(a), 1342(p).

13. EPA Has Made Stormwater Discharges from Steam Electric Generating Facilities Subject to the Requirements of EPA’s General Industrial Stormwater Permit. In order to minimize polluted stormwater discharges from industrial facilities, EPA has issued a general industrial stormwater permit (“Stormwater Permit”). EPA first issued the Stormwater Permit in 1995 and reissued the permit in 2000, 2008, and 2015. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008); 80 Fed. Reg. 34403 (June 4, 2015). Steam Electric Generating facilities are subject to the requirements of this Stormwater Permit. Stormwater Permit, Appendix D, pg. 4.

14. Steam Electric Generating Facilities Must Comply with the Requirements of the Stormwater Permit. The Stormwater Permit requires these facilities to, among other things:

- a. ensure that pollutant control measures minimize pollutants in stormwater discharges, Stormwater Permit, pg. 14;
- b. ensure that stormwater discharges do not cause or have the reasonable potential to cause or contribute to a violation of water quality standards, Stormwater Permit, pg. 20;
- c. conduct monitoring of stormwater discharges at all Facility outfalls in each of the first four full quarters of permit coverage for compliance with benchmark limitations applicable specifically to Steam Electric Generating products facilities, Stormwater Permit, pgs. 41-43;
- d. report all monitoring results for all Facility outfalls to EPA by specified deadlines, Stormwater Permit, pgs. 48-49;
- e. conduct corrective action after the average of four quarterly samples exceeds EPA benchmark value, Stormwater Permit, pgs. 27, 42;
- f. conduct routine facility inspections at least quarterly (Stormwater permit, pg. 22) and quarterly visual assessments (Stormwater permit, pg. 24) to, among other things, sample

and assess the quality of the facility's stormwater discharges, ensure that stormwater control measures required by the Permit are functioning correctly and are adequate to minimize pollutant discharge, and timely perform corrective actions when they are not, Stormwater Permit, pgs. 22-26;

g. timely prepare and submit to EPA annual reports that include findings from the facility inspections and visual assessments and the documentation of corrective actions,

Stormwater Permit, pgs. 49-50; and

h. comply with any additional state requirements, *see* Stormwater Permit, pgs. 170-171.

15. Citizens May Bring an Action to Enforce these Requirements. Section 505(a)(1) and Section 505(f) of the Act provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365 and 40 C.F.R. §§ 19.1 - 19.4.

STATEMENT OF FACTS

16. Defendant owns and operates a Steam Electric Generating facility at 474 Brookline Avenue, Boston, Massachusetts (the "Facility").

17. On April 15, 2009 and August 22, 2011, MATEP submitted a Notice of Intent to be covered by the Stormwater Permit.

18. During every rain event, rainwater coming into contact with the Facility becomes contaminated with Iron.

19. The polluted stormwater from the Facility discharges into the City of Boston's municipal storm drain system and thence to the Muddy River. Control measures taken at the Facility are inadequate to prevent such discharges from exceeding the Stormwater Permit's benchmark standards for Iron.

20. Dissolved Iron is bioavailable and can be toxic to fish and other aquatic life. Iron in the form of solid particulate can settle on the bottom of water bodies and destroy bottom-dwelling invertebrates, plants, or incubating fish eggs. Iron can also cause aesthetically objectionable conditions in water bodies by making the water appear rust colored.

21. Defendant has not adequately controlled or minimized its stormwater pollutant discharges as required by the permit.

FIRST CAUSE OF ACTION

Failure to Reduce and/or Eliminate Pollutants to the Extent Achievable: Violations of 33 U.S.C. § 1311(a)

22. Plaintiff re-alleges and incorporates Paragraphs 1-21, inclusive, as if fully set forth herein.

23. Since at the latest October 1, 2010, MATEP has failed to ensure that its control measures reduce and/or eliminate Iron in its stormwater discharges to the extent achievable, using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice. Stormwater Permit, section 2.0 (pg. 14).

24. Since at the latest October 1, 2010, defendant has failed to comply with the Stormwater Permit's requirement to modify its control measures whenever it finds that they "are not achieving their intended effect of minimizing pollutant discharges." General Permit, section 2.1 (pg. 14).

25. Since at the latest October 1, 2010, defendant has failed to take adequate corrective action, as set forth in Section 4.2, after the average of four quarterly Iron sample results exceeded applicable benchmarks. To the extent corrective action was taken by the company following the triggering of this event, such corrective action was inadequate, as evidenced by the persistent exceedence of the benchmarks.

26. Iron levels in MATEP's stormwater discharges have been significantly above EPA benchmark levels since, at the earliest, October 1, 2010. The presence and persistence of these

exceedences shows that the company has not complied with its requirement to "modify" its control measures to minimize its pollutant discharges to the extent achievable.

27. Each of Defendant's violations of the reduction and/or elimination requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day on which the violation occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was discharged from the Facility and on which the failure to reduce and/or eliminate pollutants occurred and/or continued.

SECOND CAUSE OF ACTION

Failure to Comply with the Monitoring Requirements of the Stormwater Permit: Violations of 33 U.S.C. § 1311(a)

28. Plaintiff re-alleges and incorporates Paragraphs 1 - 27, inclusive, as if fully set forth herein.

29. Defendant has failed to consistently comply with the Stormwater Permit's requirement for monitoring of its stormwater discharges for compliance with benchmark limitations. Stormwater Permit, section 6.2.1.

30. Defendant's violations establish an ongoing pattern of failure to comply with the Permit's monitoring requirements.

31. Each of Defendant's violations of the monitoring requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for each day on which the failure to monitor occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was discharged from the facility and on which the violation occurred and/or continued.

THIRD CAUSE OF ACTION

Failure to Comply with the Reporting Requirements of the Stormwater Permit: Violations of 33 U.S.C. § 1311(a)

32. Plaintiff re-alleges and incorporates Paragraphs 1-31, inclusive, as if fully set forth herein.

33. Defendant has failed to consistently comply with the Stormwater Permit's requirement for reporting benchmark monitoring results to EPA. Stormwater Permit, sections 6.1.9 and 7.4.

(Previous relevant sections: 4.3.1, 4.3.2, 7.2). Defendant's violations of the Permit's reporting requirements are separate and distinct from violations of the Permit's monitoring requirements.

34. These violations establish an ongoing pattern of failure to comply with the Permit's reporting requirements.

35. Each of Defendant's violations of the benchmark monitoring reporting requirements of the Stormwater Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C.

§ 1311(a), for each day on which the failure to report occurred and/or continued. Alternatively, each of these violations is a separate and distinct violation for each day on which stormwater was discharged from the facility and on which the violation occurred and/or continued.

RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

1. Declare Defendant to have violated and to be in violation of the Act as alleged herein;
2. Enjoin Defendant from discharging stormwater containing excessive levels of Iron from the Facility;
3. Require Defendant to implement the requirements of the Stormwater Permit;
4. Order Defendant to pay civil penalties of up to \$37,500 per day of violation, pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 74 Fed. Reg. 626, 627 (2009);
5. Order Defendant to take appropriate actions to restore the quality of navigable waters impaired by its activities;
6. Award Plaintiff's costs (including reasonable investigative, attorney, witness, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and
7. Award any such other and further relief as this Court may deem appropriate.

Dated: 9/3/2015

Respectfully submitted,

/s/Nora J. Chorover

NORA J. CHOROVER (Bar No. 547352)

Law Office of Nora J. Chorover

11 Green Street

Boston, MA 02130

Phone: 617-477-3550

nchorover@choroverlaw.com

Attorney for Plaintiff

CLEAN WATER ACTION

CLEAN WATER ACTION'S CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and Massachusetts District Court

Local Rule 7.3, Plaintiff Clean Water Action states that it does not have a parent corporation and no publicly held company owns 10% or more of its stock.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CLEAN WATER ACTION,

Plaintiff,

v.

MATEP LLC,

Defendant.

Case No.: 15-cv-13283

CONSENT DECREE

WHEREAS, plaintiff Clean Water Action (“Clean Water Action”) is a nationwide non-profit organization working for prevention of pollution in the nation’s waters;

WHEREAS, defendant MATEP LLC (“MATEP”) operates a cogenerating facility (electricity, steam, chilled water) at 474 Brookline Avenue, Boston, Massachusetts that is the subject of this lawsuit (the “Facility”);

WHEREAS, Clean Water Action alleges that stormwater from the Facility discharges to a separate municipal storm sewer that drains to the Muddy River and that these stormwater discharges are regulated pursuant to the federal Clean Water Act (the “Act”) and covered by the Final National Pollutant Discharge Elimination System (“NPDES”) Multi-Sector General Permit issued by the United States Environmental Protection Agency (the “Storm Water Permit”). *See* 33 U.S.C. §§ 1311(a), 1342(a), 1342(p); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008); 80 Fed. Reg. 34403 (June 4, 2015);

WHEREAS, on November 3, 2014, Clean Water Action provided notice of alleged violations of the Act, and of Clean Water Action’s intention to file suit against MATEP, to the

Administrator of the United States Environmental Protection Agency (“EPA”); the Administrator of EPA Region I; the Massachusetts Department of Environmental Protection; and to MATEP, pursuant to Section 505 of the Act, 33 U.S.C. § 1365;

WHEREAS, prior to receipt of the November 3, 2014 Notice, MATEP had been relying upon the services of a stormwater consultant;

WHEREAS, following receipt of the November 3, 2014 Notice, MATEP has taken certain steps, including retention of a new stormwater consultant, review of on-site housekeeping and maintenance in areas potentially impacting stormwater quality, and changed its stormwater sampling procedures to improve the quality of its samples of certain stormwater discharges from the Facility and the accuracy of the testing thereof;

WHEREAS, MATEP anticipates that these steps, together with implementation of the Best Management Practices (“BMPs”) and other measures set forth herein, and in MATEP’s updated Stormwater Pollution Prevention Plan (“SWPPP”) for the Facility, will enable it to comply with applicable state water quality standards and any applicable effluent standards set forth in the Storm Water Permit;

WHEREAS, MATEP denies the allegations of Clean Water Action that MATEP has violated the Storm Water Permit or the Act;

WHEREAS, the parties have decided that it is in the best interests of all parties to resolve the litigation by agreement without adjudication of any fact, allegation, or law set forth above; and

WHEREAS, this Consent Decree (“Consent Decree”) shall be submitted to the United States Department of Justice for the forty-five (45) day statutory review period pursuant to 33 U.S.C. § 1365(c).

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

INJUNCTIVE RELIEF

1. MATEP agrees to operate the Facility in compliance with the applicable requirements of the Storm Water Permit and the Act, including any amendments to the Storm Water Permit or the Act that may be made during the term of this Consent Decree.
2. MATEP will perform quarterly benchmark monitoring for iron at all of its outfalls for the term of this Consent Decree unless otherwise agreed to in writing by the parties.
3. Control Measures
 - a. Within 60 days following the Effective Date of this Consent Decree, MATEP shall perform additional sampling of rainwater to investigate whether cooling water droplets may be contributing to increased iron in rainwater and shall provide the results of this sampling to Clean Water Action.
 - b. Within 60 days following the Effective Date of this Consent Decree, MATEP shall reconfigure the sampling ports at Outfall 003 (sampling port 2) and Outfall 004 (sampling port 1) to improve the quality of its samples of stormwater discharges from those outfalls and report to Clean Water Action that the reconfiguration has been completed.
 - c. MATEP will paint rusty equipment on its roof that may be contributing to elevated iron levels. Painting shall take place expeditiously and shall be completed by no later than 180 days after the Effective Date. MATEP shall report to Clean Water Action when painting has been completed.
 - d. MATEP will clean its interior stormwater drainpipes and remove their contents to an appropriate off-site disposal location. Cleaning shall take place expeditiously and shall be

completed by no later than 180 days after the Effective Date. MATEP shall report to Clean Water Action when cleaning has been completed.

4. Continued Review of Control Measures to Reduce Iron. MATEP will continue to investigate sources of iron in its stormwater and continue to investigate potential control measures (including maintenance options and best management practices) to minimize iron in its stormwater as required by the Storm Water Permit or the Act.

5. Involvement by Clean Water Action.

a. MATEP shall permit representatives of Clean Water Action to perform up to two site visits to the Facility during normal daylight business hours during each year for the two years following the Effective Date of this Consent Decree, provided that Clean Water Action notifies MATEP in writing at least two (2) business days in advance of any such site visit. For each such site visit, Clean Water Action personnel shall comply with safety requirements and be accompanied at all times by an employee of MATEP. During such site visit, Clean Water Action shall have access to and permission to copy MATEP's current SWPPP and any and all documentation required to be kept on site by the Storm Water Permit.

b. For the term of this Decree, MATEP shall provide Clean Water Action with the following documents, by emailing them to compliance@cleanwater.org and nchorover@choroverlaw.com:

1. Copies of all documents MATEP submits to EPA, the Commonwealth of Massachusetts and/or the City of Boston concerning the Facility's storm water discharges, including but not limited to all documents and reports submitted as required by the Storm Water Permit. Such documents and reports shall be submitted contemporaneously with their submission to the governmental entity.

2. Copies of any revisions to MATEP's SWPPP within 48 hours of a request by Clean Water Action.
3. Laboratory reports and analytical results of quarterly and annual storm water sampling performed by or for MATEP, within 30 days of receiving the reports.
4. All Quarterly Visual Inspection Forms and Routine Facility Inspection Forms, including laboratory results for the samples, shall be submitted to Clean Water Action with the Annual Report.

PAYMENT, FEES AND COSTS

6. Within 30 days after the Effective Date, MATEP shall pay the sum of \$32,500 (the "Payment") to the Charles River Watershed Association, a voting member of the Muddy River Maintenance and Management Oversight Committee, to help fund the Muddy River Restoration Project. The Payment or any portion thereof shall not be disbursed or otherwise granted directly or indirectly to Clean Water Action. The payment shall be delivered by certified mail, return receipt requested, or by nationally recognized overnight delivery company, to: Charles River Watershed Association, 190 Park Road, Weston, MA 02493, attention Robert Zimmerman, Executive Director. Evidence of such payment shall be provided to Clean Water Action.

7. Within thirty (30) days after the Effective Date of this Consent Decree, MATEP shall reimburse Clean Water Action in the amount of \$22,000 to defray Clean Water Action's investigation fees and costs, expert fees and costs, and attorneys' fees incurred up to the date of entry of this Consent Decree. Payments shall be made by check or money order, made out to Law Office of Nora J. Chorover, Client Trust Account, and be delivered by certified mail, return receipt requested, or by nationally recognized overnight delivery company, to Nora J. Chorover, Law Office of Nora J. Chorover, 11 Green Street, Boston, MA 02130.

8. Within sixty (60) days after the Effective Date of this Consent Decree, MATEP shall pay to Clean Water Action \$10,000 to be placed in the Client Trust Account held for its benefit by Law Office of Nora J. Chorover, to be used to reimburse Clean Water Action for reasonable fees and costs incurred to monitor MATEP's compliance with this Consent Decree for a term of two years after the Effective Date of this Consent Decree. Payment shall be made by check or money order, made out to Law Office of Nora J. Chorover, Client Trust Account, and be delivered by certified mail, return receipt requested, or by nationally recognized overnight delivery company, to Law Office of Nora J. Chorover, 11 Green Street, Boston, MA 02130. Nothing in this paragraph or in this Consent Decree shall restrict Clean Water Action's right to seek additional compensation for fees or costs that it incurs to enforce MATEP's compliance with the terms of this Consent Decree, and nothing herein shall be construed as a waiver of MATEP's right to contest any such action. Any portion of the \$10,000 that remains in the account at the expiration of the two year term shall be returned to MATEP within 30 days of expiration of this Consent Decree.

EFFECTIVE DATE OF CONSENT DECREE

9. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), this Consent Decree cannot be entered until forty-five (45) days after the receipt of a copy of the proposed Consent Decree by the United States Attorney General and EPA. Therefore, upon signing of this Consent Decree by the parties, Clean Water Action shall serve, or cause to be served, copies of this Consent Decree upon the EPA Administrator, the Regional EPA Administrator, and the Attorney General for review, as required by 40 C.F.R. § 135.5. Upon the expiration of the forty-five (45) day review period provided by 33 U.S.C. § 1365(c)(3), the parties will jointly move the Court for entry of this Consent. The date that the Court enters this Consent Decree is the Effective Date of this Consent Decree. In the event the Court does not so enter this Consent Decree in the form

presented, subject to Paragraph 27 below, the provisions of this Consent Decree shall be null and void and of no effect.

RELEASE

10. Upon the Effective Date of this Consent Decree, Clean Water Action, on its own behalf and on behalf of its members, parents, subsidiaries, affiliates, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases MATEP and all its managers, members, parents, subsidiaries, affiliates, directors, officers, agents, attorneys, representatives, employees, predecessors in interest in or title to the Facility, successors and assigns from, and waives forever all claims, whether known or unknown, for damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in this Action, for the alleged failure to comply with the Act and the Storm Water Permit at the Facility, up to and including the date this Consent Decree is executed by the parties. Clean Water Action does not release any claims to enforce any term of this Consent Decree. Clean Water Action does not release any claims for violations of the Storm Water Permit or the Act that may occur or continue after the date this Consent Decree is executed by the parties.

11. MATEP, on its own behalf and on behalf of its members, parents, subsidiaries, affiliates, predecessors in interest in or title to the Facility, successors, assigns, directors, officers, agents, attorneys, representatives, and employees, releases Clean Water Action and its members, subsidiaries, affiliates, successors, assigns, directors, officers, agents, attorneys, representatives, and employees from, and waives forever all claims, whether known or unknown, which arise from or pertain to this Action, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters associated with or related to this Action up to and including the date this

Consent Decree is executed by the parties. MATEP does not release any claims to enforce any term of this Consent Decree. MATEP does not release any claims for activities or events that may occur or continue after the date this Consent Decree is executed by the parties.

DISPUTE RESOLUTION

12. If a dispute under this Consent Decree arises, or either party believes that a breach of this Consent Decree has occurred, the parties shall meet and confer within fourteen (14) calendar days of receiving written notification from the other party of a request for a meeting to determine whether a violation has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute. If the parties fail to meet and confer, or the meet-and-confer does not resolve the issue, after at least seven (7) days have passed after the meet-and-confer occurred or should have occurred, either party shall be entitled to all rights and remedies under the law, including filing a motion with the District Court of Massachusetts, which shall retain jurisdiction over this matter for the limited purposes of enforcement of the terms of this Consent Decree and in accordance with Paragraph 28. The parties shall be entitled to seek fees and costs incurred in any such motion. Any fee determination by the Court shall be governed by the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d) and applicable case law interpreting such provisions.

MISCELLANEOUS PROVISIONS

13. This Consent Decree was entered by the parties as a settlement of disputed matters, and neither this Consent Decree nor any action taken pursuant to it shall be construed as an admission of any fact or liability, either expressed or implied; and this Consent Decree shall not be offered by the parties hereto or any other person as evidence of any alleged fact or liability, nor entered in any legal or administrative proceeding for any purpose other than to enforce the terms hereof.

14. The Term of this Consent Decree shall be two (2) years after the Effective Date.
15. This Consent Decree shall be binding on the parties and on their respective successors and assigns.
16. This Consent Decree may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.
17. Nothing in this Consent Decree shall be construed to limit in any way MATEP's obligations under any federal, state, or local law or regulation governing any activity required by this Consent Decree.
18. In the event that any of the provisions of this Consent Decree is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.
19. The language in all parts of this Consent Decree, unless otherwise stated, shall be construed according to its plain and ordinary meaning.
20. The undersigned are authorized to execute this Consent Decree on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Consent Decree.
21. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties concerning the subject matter of this Consent Decree are contained herein. This Consent Decree and any attachments are made for the sole benefit of the parties, and no other person or entity shall have any rights or remedies under or by reason of this Consent Decree, unless otherwise expressly provided for therein.
22. The parties expressly understand and agree that each party has freely and voluntarily entered into this Consent Decree with and upon advice of counsel.
23. This Consent Decree and any attachments contain all of the terms and conditions agreed upon by the parties relating to the matters covered by the Consent Decree, and supersede any and

all prior and contemporaneous agreements, negotiations, correspondence, understandings, and communications of the parties, whether oral or written, respecting the matters covered by this Consent Decree. This Consent Decree may be amended or modified only by a writing signed by the parties or their authorized representatives, followed by order of the Court adopting such change.

24. Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to Clean Water Action pursuant to this Consent Decree shall, unless otherwise provided in this Consent Decree, be sent via electronic mail to nchorover@choroverlaw.com and compliance@cleanwater.org.

Any notices or documents required or provided for by this Consent Decree or related thereto that are to be provided to MATEP pursuant to this Consent Decree shall, unless otherwise provided in this Consent Decree, be hand delivered, sent by U.S. Mail, postage prepaid, or by nationally recognized overnight delivery company, and addressed as follows, or sent via electronic mail to

MATEP, President
474 Brookline Avenue
Boston, MA 02215

With a copy to:

Sander A. Rikleen, Esq.
Sherin & Lodgen LLP
101 Federal Street
Boston, MA 02110
srikleen@sherin.com

Each party shall notify the other parties of any change in their contact information within fourteen (14) days of any such change.

25. MATEP does not, by entering into this Consent Decree, waive any defenses or rights with respect to any allegation or claim asserted by anyone, including Clean Water Action, of any kind or nature arising or alleged after the date MATEP signs this Consent Decree, and MATEP

does not waive any defenses or rights with respect to any allegation or claim which may be asserted by EPA or the Commonwealth of Massachusetts.

26. Signatures of the parties transmitted by facsimile or electronic mail are binding.

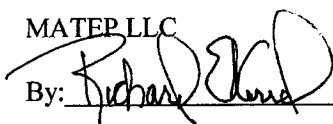
27. If for any reason the Court should decline to approve this Consent Decree in the form presented, the Consent Decree shall be null and void and the parties agree to work together in good faith to attempt to agree on modifications to this Consent Decree within thirty (30) days to make it acceptable to the Court.

28. This Court shall retain jurisdiction over this matter and allow this action to be reopened for the purpose of enabling the parties to this Consent Decree to apply to the Court for any further order that may be necessary to construe, carry out, enforce compliance and/or resolve any dispute regarding the terms or conditions of this Consent Decree.

Clean Water Action

By: _____ Dated: _____

MATEP LLC

By:  _____ Dated: 9-2-2015

APPROVED:

United States District Judge

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Clean Water Action

By:  Dated: August 26, 2015

MATEP LLC

By: _____ Dated: _____

APPROVED:

United States District Judge